

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 LEILANI WRIGHT,

11 Plaintiff,

v.

12 BELFOR USA GROUP, INC.,

13 Defendant.

14 CASE NO. C24-0907-JCC

15 ORDER

16 This matter comes before the Court on Defendant's partial motion to dismiss (Dkt. No.
17 9). Having thoroughly considered the briefing and the relevant record, the Court finds oral
18 argument unnecessary and hereby GRANTS in part and DENIES in part the motion for the
19 reasons explained herein.

20 **I. BACKGROUND**

21 This is an employment dispute between Plaintiff Leilani Wright and her former
22 employer, Belfor USA Group, Inc. ("Defendant"). (*See* Dkt. No. 2-1 at ¶¶ 1.2–1.3, 2.2.)
23 According to the complaint, Plaintiff worked for Defendant from 2011–2021. (*See id.* at ¶¶ 2.2,
24 2.166–2.167.) Plaintiff alleges that, throughout her tenure, Defendant and its employees
25 subjected her to various abuses, including, amongst other things: drugging her, (*see id.* at ¶ 2.6);
26 using profanity in her presence and belittling her, (*see id.* at ¶ 2.13); requiring her to endure shifts

1 lasting over 24 hours, (*see id.* at ¶ 2.13); adjusting her payroll so as “to eradicate any possibility
 2 of overtime,” (*see id.* at ¶ 2.137); and sexually assaulting, harassing, and threatening her, (*see id.*
 3 at ¶¶ 2.34–2.51). Plaintiff further alleges that she sustained injuries as a result of her work, and
 4 that Defendant’s inability to provide reasonable accommodations for her injuries resulted in her
 5 eventual termination. (*See id.* at ¶¶ 2.95–2.171.) Plaintiff brought suit in King County Superior
 6 Court. (*See generally id.*) Defendant removed the action to this Court based on diversity
 7 jurisdiction. (*See generally* Dkt. No. 2.)

8 The complaint brings the following causes of action: (1) negligent infliction of emotional
 9 distress and defamation of character; (2) unlawful retaliation in response to Plaintiff’s worker’s
 10 compensation claim; (3) discrimination; (4) unlawful retaliation in response to Plaintiff’s report
 11 of sexual assault and gender discrimination; (5) unlawful retaliation in response to Plaintiff’s
 12 Washington Law Against Discrimination (“WLAD”) claim; (6) failure to accommodate under
 13 WLAD; (7) wage theft; and (8) failure to pay outstanding wages. (Dkt. No. 2-1 at ¶¶ 3.2–3.45.)
 14 Defendant moves to dismiss Claims 1, 6, 7, and 8 pursuant to Rule 12(b)(6). (Dkt. No. 9 at 6.)

15 II. DISCUSSION

16 A. Legal Standard

17 Dismissal is proper when a plaintiff “fails to state a claim upon which relief can be
 18 granted.” Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must “contain
 19 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.”
 20 *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). A claim is facially plausible when the “plaintiff
 21 pleads factual content that allows the court to draw the reasonable inference that the defendant is
 22 liable for the misconduct alleged.” *Id.* at 678. In turn, “[t]hreadbare recitals of the elements of a
 23 cause of action, supported by mere conclusory statements, do not suffice.” *Id.* As such, a plaintiff
 24 must provide grounds for their entitlement to relief that amount to more than labels and
 25 conclusions or a formulaic recitation of the elements of a cause of action. *Bell Atl. Corp. v.*

1 *Twombly*, 550 U.S. 544, 545 (2007).

2 **B. First “Cause” of Action – Certain State Tort Claims**

3 Plaintiff’s first cause of action is, in fact, a “blend”¹ of two separate state law claims: (1) negligent infliction of emotional distress (“NIED”) and (2) defamation.

5 1. NIED

6 Defendant seeks to dismiss Plaintiff’s NIED claim on the grounds that the alleged
7 conduct supporting this claim is duplicative of Plaintiff’s sexual harassment claim. (*See* Dkt. No.
8 at 8.) In so arguing, Defendant cites *Francom v. Costco Wholesale Corp.*, wherein the
9 Washington Court of Appeals held that the trial court properly dismissed the plaintiffs’ NIED
10 claim at the summary judgment stage because its underlying factual basis was the same as that of
11 the plaintiffs’ discrimination claim. *See* 991 P.2d 1182, 1192 (Wash. Ct. App. 2000). Defendant
12 argues *Francom* stands for the proposition that, where an “NIED claim is improperly
13 duplicative,” it should be dismissed. (Dkt. No. 9 at 8.)

14 However, Defendant conflates the issue of pleading standards with that of double
15 recovery. In general, “[b]ecause the law will not permit a double recovery, a plaintiff will not be
16 permitted to be compensated twice for the same emotional injuries.” *Francom*, 991 P.2d at 1192
17 (Ct. App. Wash. 2000). The key point, however, is that a plaintiff may not recover emotional
18 damages under two separate claims if the emotional injury alleged for both claims arises from
19 the same set of underlying facts. *See Nygren v. AT&T Wireless Servs., Inc.*, 2005 WL 1244976
20 slip op. at 1 (W.D. Wash. 2005). Indeed, *Francom* does not require a court to dismiss emotional
21 distress claims to the extent they are duplicative; instead, it merely establishes that a plaintiff
22 “cannot win ‘double recovery’ under discrimination and negligence theories” to the extent the
23 underlying facts supporting each claim are duplicative. *Neravetla v. Virginia Mason Med. Ctr.*,
24 2014 WL 12787979, slip op. at 5 (W.D. Wash., 2014). Accordingly, at this stage, Defendant’s

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26 ¹ Here, the Court borrows Defendant’s characterization of Plaintiff’s first cause of action. (*See*
Dkt. No. 9 at 8.)

1 concerns regarding “improperly duplicative” claims are premature. *See id.*

2 The Court DENIES Defendant’s motion to dismiss the NIED claim.

3 2. Defamation

4 To establish a claim of defamation under Washington law, a plaintiff must show: (1) a
 5 false statement; (2) lack of privilege to make the otherwise false statement; (3) fault; and (4)
 6 damages. *See Phillips v. World Publ’g Co.*, 822 F. Supp. 2d 1114, 1118 (W.D. Wash. 2011).

7 Defendant argues that Plaintiff fails to sufficiently plead even the first element of a
 8 defamation claim because the complaint does not identify a false statement, when that false
 9 statement was uttered, or to whom. (Dkt. No. 9 at 9.) The Court agrees. Plaintiff’s defamation
 10 claim consists of a singular conclusory statement: “Defendant and Mr. Canty’s denial of the true
 11 events caused Plaintiff to be defamed in the community and resulted in substantial damages,
 12 including the inability to work, fearful and anxious going to work every day, and permanent
 13 damage to her reputation,” and nothing more. (Dkt. No. 2-1 at ¶ 3.3.) Aside from this wholly
 14 conclusory statement, Plaintiff neglects to provide further detail on the nature of the statements
 15 themselves or to whom they were made.

16 Accordingly, the Court GRANTS Defendant’s motion to dismiss Plaintiff’s defamation
 17 claim with leave to amend.

18 C. **Sixth Cause of Action – Failure to Accommodate Under WLAD**

19 A WLAD failure to accommodate claim requires four elements: (1) the plaintiff suffered
 20 from a disability; (2) the plaintiff was qualified to do the job at issue; (3) the plaintiff gave their
 21 employer notice of the disability; and (4) upon notice, the employer failed to reasonably
 22 accommodate that disability. *See Bell v. Boeing Company*, 599 F. Supp. 3d 1052, 1069 (W.D.
 23 Wash. 2022) (citing *LaRose v. King Cnty.*, 437 P.3d 701, 721 (Wash. Ct. App. 2019)).

24 Defendant argues that Plaintiff’s failure to accommodate claim is mostly a “formulaic
 25 recitation of (some of) the elements,” thus warranting dismissal. (Dkt. No. 9 at 10.) Again, the
 26 Court agrees. To be sure, Plaintiff, in her myriad of factual allegations, manages to sufficiently

1 plead the first three elements of her failure to accommodate claim. First, Plaintiff alleges that she
 2 suffered from a disability in the form of a torn rotator cuff and bicep tendon. (Dkt. No. 2-1 at ¶¶
 3 2.111, 2.118.) Second, the Court reads Plaintiff's examples of the accolades she received from
 4 her colleagues as sufficient pleadings of her qualification to do the job at issue.² (Dkt. No. 2-1 at
 5 ¶¶ 2.143–2.144.) Third, Plaintiff alleges that Defendant (a) offered her an employment letter
 6 “outlining accommodations for her physical restrictions” and (b) assigned her to perform “light-
 7 duty office tasks” in response to Plaintiff’s request for accommodation, thus sufficiently showing
 8 that Defendant was on notice of her disability. (Dkt. No. 2-1 at ¶¶ 2.119, 2.122.)

9 However, Plaintiff fails to sufficiently plead the final element—that, upon notice,
 10 Defendant failed to reasonably accommodate her disability. Plaintiff merely states that
 11 Defendant “failed to accommodate Plaintiff’s physical limitation by failing to engage in the
 12 interactive process with her and by terminating her for having a disability,” without more. (Dkt.
 13 No. 2-1 at ¶ 3.32.) Plaintiff does not provide any indication of *how* Defendant failed to
 14 accommodate her—that is, she does not allege any facts to suggest that the accommodation
 15 Defendant provided her (*i.e.*, “light-duty office tasks”) was unreasonable or insufficient. In fact,
 16 and as noted, Plaintiff herself alleges that Defendant (a) offered her an employment letter
 17 “outlining accommodations for her physical restrictions” and (b) assigned her to perform “light-
 18 duty office tasks” in response to Plaintiff’s request for accommodation. (Dkt. No. 2-1 at ¶¶
 19 2.119, 2.122.) Taking Plaintiff’s own allegations as true, this Court cannot reasonably infer that
 20 Defendant failed to accommodate her disability.

21 As such, Plaintiff has failed to state a failure to accommodate claim, and the Court
 22 GRANTS Defendant’s motion to dismiss this cause of action with leave to amend.

25 2 For example, Plaintiff alleges that her colleagues “praised the Plaintiff’s exemplary work ethic
 26 and the positive impact it had on their own responsibilities.” (Dkt. No. 2-1 at ¶¶ 2.144.)

1 **D. Seventh and Eighth Causes of Action – Wage and Labor Code Violations**

2 1. Wage Rebate Act Claim

3 To assert a claim under Washington’s Wage Rebate Act (“WRA”), a plaintiff must show
 4 that an employer “willfully and with intent to deprive the employee of any part of his or her
 5 wages” paid the plaintiff “a lower wage than the wage such employer is *obligated* to pay such
 6 employee by any statute, ordinance, or contract[.]” RCW 49.52.050(2) (emphasis added).

7 The Ninth Circuit has interpreted the word “obligated” to indicate “a pre-existing duty
 8 imposed by contract or statute,” and thus the statute does not apply in cases where “there is a
 9 bona fide dispute as to whether the employer is obligated to pay the amounts in question.”

10 *Hemmings v. Tidyman’s Inc.*, 285 F.3d 1174, 1203–04 (9th Cir. 2002). More still, “Washington
 11 courts have not extended RCW § 49.52.050 to situations where employers violate anti-
 12 discrimination statutes.” *Id.* at 1203. As such, violations of RCW 49.52.050 are typically upheld
 13 only “where an employer consciously withholds a quantifiable and undisputed amount of
 14 accrued pay,” such as in cases of failure to pay wages or failure to issue regular paychecks. *Id.*

15 Defendants argue that Plaintiff’s WRA claim (a) once again merely recites “the elements
 16 of a potential claim under the WRA,” and (b) otherwise fails to identify any contract or statute
 17 under which Defendant was “obligated” to pay Plaintiff more. (Dkt. No. 9 at 11.) Once again, the
 18 Court agrees. Plaintiff’s WRA claim is a formulaic and conclusory recitation of RCW
 19 49.52.050(2). (*See* Dkt. No. 2-1 at ¶¶ 3.34-3.39.) Indeed, Plaintiff alleges that “Defendants paid
 20 Plaintiff a lower wage than they were obligated to pay her pursuant to contract or statute,” (*id.* at
 21 ¶ 3.37), but does not specify *what* contract or *which* statute. (*See id.*) And while Plaintiff
 22 suggests that she “[took] on additional duties without a corresponding increase in pay or
 23 training,” she does not otherwise cite to any law or contract that would have required Defendant
 24 to increase Plaintiff’s wages when it assigned her with said “additional duties.” (*Id.* at ¶ 2.130.)

25 Furthermore, in an attempt to understand the underlying “obligation” of Plaintiff’s WRA
 26 claim, Defendant speculates that Plaintiff bases her WRA claim on Washington’s

1 antidiscrimination statutes. (See Dkt. No. 9 at 11.) But, as Defendant rightfully notes, “a claim
 2 under the WRA does not exist where there is a ‘bona fide’ or ‘fairly debatable’ dispute,” as is the
 3 case with Plaintiff’s antidiscrimination claim. (Dkt. No. 9 at 11.) And, in any event, Washington
 4 courts have yet to interpret violations of antidiscrimination statutes as an “obligation” under the
 5 WRA. *See Hemmings*, 285 F.3d at 1203 (9th Cir. 2002).³

6 Accordingly, Plaintiff has failed to state a claim under the WRA, and the Court GRANTS
 7 Defendant’s motion to dismiss Plaintiff’s WRA claim with leave to amend.

8 2. Wage Payment Act Claim

9 Under the Wage Payment Act (“WPA”), “when any employee shall cease to work for an
 10 employer, whether by discharge or by voluntary withdrawal, the wages due him or her on
 11 account of his or her employment shall be paid to him or her at the end of the established pay
 12 period” RCW 49.48.010(2).

13 Defendant argues that Plaintiff failed to allege any facts in support of her WPA claim.
 14 (See Dkt. No. 9 at 12.) Here, the Court disagrees. Plaintiff alleges at least one fact that supports
 15 her wage theft claim. Indeed, Plaintiff provides that, after working more than her allotted forty
 16 hours a week, “Mr. Daviscourt instructed payroll to adjust her clock-out time to eradicate any
 17 possibility of overtime” and that these potential overtime wages “remain unpaid up to the present
 18 date.” (Dkt. No. 2-1 at ¶¶ 2.136–2.138.)⁴ If taken as true, which the Court is required to do so

19 ³ In her reply (Dkt. No. 15), Plaintiff argues that her claim “is not solely based on
 20 antidiscrimination statutes but also on the assertion that Belfor had a statutory obligation to pay
 21 her wages,” yet still fails to specify the basis of said “statutory obligation.” (*Id.* at 5.)

22 ⁴ Defendant also argues in its reply (Dkt. No. 16) that Plaintiff’s wage theft claim fails because
 23 the WPA “contemplates wages owed for work performed in the pay period *immediately*
 24 *preceding* a plaintiff’s termination” (emphasis added), and Plaintiff “did not work overtime in
 25 the ‘pay period’ immediately preceding her termination;” thus, Defendant could not possibly
 26 owe Plaintiff for overtime work performed in the pay period immediately preceding her
 termination. (*Id.* at 6–7.) Here, Defendants rely on *Escobar v. Baker*, which states: “The Court
 concludes that RCW 49.48.010 applies only to deductions at the end of the final pay period after
 the employee ceases working.” 814 F. Supp. 1491, 1507 (W.D. Wash. 1993). However,
 Defendant misinterprets this sentence of *Escobar*. In *Escobar*, the court dismissed the plaintiffs’

1 here, then Plaintiff has plead sufficient factual content to reasonably infer that Defendant may
2 owe Plaintiff wages pursuant to RCW 49.48.010(2).

3 Accordingly, the Court DENIES Defendant's motion to dismiss Plaintiff's WPA claim.

4 **III. CONCLUSION**

5 For the foregoing reasons, Defendants' partial motion to dismiss (Dkt. No. 9) is
6 GRANTED in part and DENIED in part. Specifically, the Court GRANTS Defendant's motion
7 to dismiss Plaintiff's claims for defamation, failure to accommodate, and violation of the Wage
8 Rebate Act (Counts I (defamation), VI, and VII), with leave to amend. Any amendment is due
9 within 30 days of this order. Plaintiff's remaining claims survive.

10 DATED this 22nd day of August 2024.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE

21 wage theft claim because the plaintiffs had sought to recover for deductions made to paychecks
22 they received *while* they were still employed, and RCW 49.48.010 only applied to paychecks
23 received *after* an employee ceases to work. *See id.* at 1506–07. Here, however, Plaintiff is not
24 seeking to recover for deductions made to paychecks she received *during* her employment, but
rather for outstanding overtime wages she asserts were withheld from her final paycheck *after*
she was terminated. (*See* Dkt. No. 2-1 at ¶¶ 3.42–3.43.) This falls squarely within the ambit of a
wage theft claim. *See Vale v. City of Seattle*, 2024 WL 3043592, slip op. at 10 (W.D. Wash.
2024) (“To assert a plausible wage theft claim, Plaintiffs would need to assert a separate cause of
action alleging, for example, that Defendants did not pay Plaintiffs for all hours worked before
they were terminated from their employment”).